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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,420	04/12/2004	Scott P. March	P6728	2562

7590 05/18/2005  
Michael L. Kenaga  
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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/822,420	<b>Applicant(s)</b> MARCH ET AL.	
	<b>Examiner</b> Joseph M Pelham	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-11, 14, 15, 18-20, 22-24, 31, 34-36, 38-40 and 42-46 is/are rejected.
- 7) ☒ Claim(s) 4, 8, 12, 13, 16, 17, 21, 25-30, 32, 33, 37, 41, 47 and 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/12/04</u> | 6) <input type="checkbox"/> Other: ____  |

### ***Drawings***

The drawings are objected to because the numerals and lead lines are unclear, and Figures 1-4 are reproduced photographs which also are not clear. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

Claims 5-7, 22-24, and 38-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5, 22, and 38 all recited "horizontal inlets...coupled to a **vertical** portion of the pathway" (Examiner's emphasis). Applicant evidently intends that the horizontal inlets be coupled to a *horizontal* portion of the pathway, as disclosed in the specification.

Claims 6, 23, and 39 recite "the platen heating element," for which there is no antecedent basis in the claims from which they depend, which recite only "one platen."

Claims 7, 24, and 40 recite that "**the inlet** includes a foil heater plate" (Examiner's emphasis); however, only the "receiving tray 59" is described in the specification to include this heater.

### ***Claim Rejections - 35 USC § 102***

Claims 1-3, 5, 9-11, 18-20, 22, 34-36, 38, and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 4281594 (US'594).

Referring to Fig.2. col. 1, line 64, through col. 2, line 8, col. 2, lines 40-68, and col. 3, lines 35-51, US'594 discloses a toasting device with housing comprising two heater platens 31, 62/52 which are inherently heated by embedded elements, first and second inlets 38 and toasting paths having platens adjusted for different food

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thicknesses, and because convection heat transfer inherently obtains in any oven utilizing radiant heating means, the oven of US'594 provides the recited "impingement heating." The recited "horizontal inlets...coupled to a vertical portion of the pathway" has been interpreted to intend that the horizontal inlets be coupled to a *horizontal* portion of the pathway, which limitation is met by US'594.

### ***Claim Rejections - 35 USC § 103***

Claims 14, 15, 24, 31, 40, 45, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'594.

Noting that although the claims recite that "the inlet includes a foil heater plate," this has been interpreted to intend that the "receiving tray 59" includes the heater plate; the claims otherwise differ from US'594 only in calling for a receiving tray with foil heater, eight IR heating elements, gear size variation and motor speed control of the conveyor, such does not patentably distinguish the claimed invention from the prior art. It would have been obvious to provide and heat a receiving tray because these means have long been utilized to maintain palatable temperatures of food items cooked in a conveyor oven; although US'594 depicts six but does not otherwise specify the number of IR heating elements, it would have been obvious to utilize eight, or any appropriate number, depending strictly upon the size of the oven and the volume rate of food that passes through; and it would have been obvious to utilize gear size variation and motor speed control for the conveyor because such are also conventional and well known means to vary conveyor speed, commended strictly by the variety of food or bread types toasted in the oven.

### ***Allowable Subject Matter***

Claims 4, 8, 12, 13, 16, 17, 21, 25-30, 32, 33, 37, 41, 47, and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6, 23, and 39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

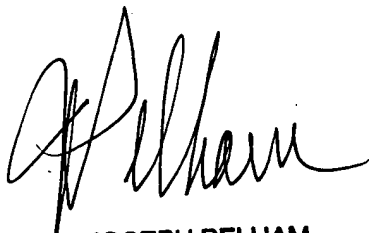
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/12/05

A handwritten signature in black ink, appearing to read 'J. Pelham', written in a cursive style.

JOSEPH PELHAM  
PRIMARY EXAMINER